IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

THURSDAY, THE 6TH DECEMBER 2007 / 15TH AGRAHAYANA 1929

WP(C).No. 35614 of 2007(M)

PETITIONER:

ANOOP K.J., AGED 21 YEARS,
S/O.K.R.JAYAN, RESIDINGA AT KANIYATH HOUSE,
(P.O.) CHERUVALOOR (VIA) KORATTY, TRICHUR DT.
KERALA.

BY ADV. SRI.SAJITH KUMAR V.

RESPONDENTS:

1. BSNL, REPRESENTED BY ITS CHAIRMAN
& MANAGING DIRECTOR,
NEW DELHI.

2. THE CHIEF GENERAL MANAGER, BSNL,
TRIVANDRUM.

3. PRINCIPAL GENERAL MANAGER BSNL,
ERNAKULAM SSA,
ERNAKULAM.

4. STATE OF KERALA REPRESENTED
BY THE SECRETARY,
DEPARTMENT OF HIGHER EDUCATION,
GOVERNMENT OF KERALA, TRIVANDRUM.

BY ADV. SRI.MATHEWS K.PHILIP,SC, BSNL

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 06/12/2007, ALONG WITH WPC NO. 35742 OF 2007 AND WPC NO.35819 OF 2007 ON 06/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

V.GIRI, J.

W.P.(C).No.35614, 35742 & 35819 of 2007

Dated this the 6th day of December, 2007.

JUDGMENT

Common issues arise for consideration in these writ petitions and they have been heard together and are being disposed of by this common judgment. W.P.(C)No.35819/07 is taken as the leading case, for convenience.

2. First respondent herein invited applications for direct recruitment in the cadre of Telecom Technical Assistant in the non executive category under BSNL, Kerala Circle. Clause 4 thereof reads as follows:

> **"Educational Qualifications: 3 years Engg.Diploma in Telecom Engg./Electronics Engg/Electrical Engg./Radio Engg./Computer Engg./Instrument Technology/MSc (Electronics) from a recognized institutions/University."**

3. The petitioners applied responding to Ext.P1. The respondent took the stand that the petitioners are not qualified in terms of the notification. The applications were, therefore, rejected. Exts.P7, P8 and P9 are the rejection memos

relating to the petitioners. In the case of third petitioner, an additional reason given is that the Non-creamy Layer certificate produced by him is not valid, as he has crossed the prescribed age as on 25.10.2007. Rejection memos are under challenge in this writ petitions.

4. Considering the fact that the examination is scheduled to be held on 8th and 9th of this month, learned standing counsel for the respondents was requested to get instructions and file a statement/counter affidavit. Such statements have been filed and the writ petitions have been heard on merits.

5. Though in the case of one of the petitioners the application is rejected on the additional ground that the applicant had crossed the age as on 25.10.2007, I do not propose to deal with that issue now. I have dealt with only the issue as to whether the applicants possess the prescribed qualifications. So also, in the case of the second petitioner in W.P.(C)No.35742/07, the standing counsel submits that the second petitioner therein has not even applied for the post in question.

6. Except the second petitioner in W.P.(C) No.35819/07, all the other petitioners hold a diploma in Computer Hardware Maintenance. Ext.P2 is a typical certificate issued from the State Board of Technical Education, Government of Kerala in favour of the first petitioner. It certifies that Sri.Shinoj is awarded the Diploma in Computer Hardware Maintenance (Three year course). The question is whether such qualification is sufficient in terms of the notification.

7. In the statement filed by the respondents, reference is made to the Recruitment Rules Ext.R1(a). The qualifications prescribed for the post of Telecom Technical Assistant reads as follows:

> **"3 years Engineering diploma in Telecom Engineering/Electronics Engineering/Electrical Engineering/Radio Engineering/Computer Engineering/Instrument Technology/M.Sc. (Electronics) from a recognised institution/University".**

8. The Recruitment Rules did not contemplate any equivalent qualification to the prescribed qualification, nor does it vouchsafe any power with the BSNL or any other authority to declare any other qualification as equivalent qualification, as is

conferred on the State Government under Rule 13 of Part II Kerala State and Subordinate Services Rules, in relation to appointments in the State service. In the circumstances, according to the standing counsel, unless the applicants possess the notified qualification, they cannot be treated as qualified in terms of the notification. The petitioners have referred to a clarification issued by the Director of Technical Education, Ext.P5 Government Order G.O.(MS)No.5/94/H.Edn. dated 7.1.1994 by which the Government has declared that the courses conducted in Model Polytechnic, Vadakara as equivalent to the corresponding courses conducted in Regular Polytechnics. Thus, the Diploma in Computer Hardware Maintenance undergone in the Model Polytechnic is declared as equivalent to the diploma in electronics in a regular polytechnic. Reference is also made to Ext.P6, certificate of equivalence issued by the Principal of the Model Polytechnic, Vadakara. Therefore, it is contended that since the authority, which has issued the certificate of Diploma in Computer Hardware Maintenance to the petitioners has declared that it is equivalent to Diploma in Computer Engineering, the same should have been treated as an adequate qualification in terms of the notification.

9. I have heard learned counsel for the petitioners Mr.T.A.Shaji, Mr.Sajith Kumar and T.I.Daniel on behalf of the petitioners and Mr.Mathew Philip on behalf of the respondents.

10. The short question which arises for consideration is whether the petitioners possess the prescribed qualification. In the case of the petitioners, who hold a Diploma in Computer Hardware Maintenance, the question is whether such a Diploma can be treated as a Diploma in Computer Engineering.

11. After hearing the parties for some time on 5.12.2007, I directed the standing counsel to ascertain whether any of the applicants for the post in question had claimed that they hold a Diploma in Computer Engineering and if so, whether they have produced any certificate to that effect. Standing Counsel submits submits that several applicants possess a Diploma in Computer Engineering. He refers to one such certificate. One Mr.Ranjith Revi was issued a certificate from the Department of Technical Education, Government of Kerala. It shows that the said applicant had undergone a course in Computer Engineering.

12. Learned standing counsel submits that there are several other applicants, who possess the qualification of a Diploma in Computer Engineering. This fact was sought to be ascertained to find out whether the term “Computer

Engineering" appearing in Ext.P1 and in the Recruitment Rules is used as description of the course or as a description of the branch or faculty, as the case may be. Apparently, if the Department of Technical Education, Government of Kerala, has offered courses, leading to a Diploma in Computer Engineering as also Diploma in Computer Hardware Maintenance, it is then difficult to hold that a Diploma in Computer Hardware Maintenance is the same as a Diploma in Computer Engineering. Nor is it possible to hold that the word "Computer Engineering", as mentioned in the Recruitment Rules or in the notification should be treated as one comprehending both Computer Hardware Maintenance and possibly software applications as well. Apparently, the appointing authority was aware of the fact that Computer Engineering by itself would be a qualification different from Computer Hardware Maintenance; that there is a distinction, seems to be evident from the manner in which the Department of Technical Education has offered two different courses for Diplomas viz., Computer Engineering and Computer Hardware Maintenance. In the circumstances, it cannot be said that a Diploma in Computer Engineering would necessarily take in or include a Diploma in Computer Hardware Maintenance. The two qualifications are different. Obviously, many of the subjects studied by the students in the two

different courses could be the same. But that does not make the two qualifications synonymous or one and the same.

13. Learned counsel then contended that if the Department of Technical Education itself had declared a Diploma in Computer Hardware Maintenance as equivalent to Diploma in Computer Engineering, the same should have been accepted by the Public Service Commission. I am unable to accept this contention for two reasons. Firstly, the post in question is one in the BSNL and the selection thereof is governed by the Recruitment Rules in force in the BSNL. Any perception of the Department of Technical Education, Government of Kerala would not be binding on them. Significantly, there is no provision either in the Recruitment Rules or in the notification enabling even the appointing authority to declare any qualification other than prescribed qualification as equivalent. In such circumstances, the appointing authority would be disabled from even considering whether a qualification, other than the notified qualification, is an equivalent qualification as such. Exception seems to be in a case where the qualification possessed by a candidate is a higher qualification, which pre-supposes the acquisition of lower qualification that is prescribed in the lower post. This is evident from Ext.R1(d) filed along with the statement indicating that

B.Tech Degree Holders in Computer Engineering can be considered as qualified in the post in question.

14. Insofar as the second petitioner in W.P.(C) No.35819/07 is concerned, he possesses a Diploma in Applied Electronics. A perusal of Ext.P1 would show that a Diploma in Applied Electronics is not one of the prescribed qualifications in Clause (IV) of the notification. Thus, for the same reason, as is mentioned above, the second petitioner also cannot be considered as qualified in terms of the notification.

For all those reasons, I am of the view that the stand taken by the respondent that the petitioners are not qualified in terms of the notification does not seem to be erroneous or otherwise vitiated. In the circumstances, the writ petitions are bereft of merits and the same are, therefore, dismissed.

Sd/-

(V.GIRI)

JUDGE

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P.S. To Judge